



Agricultural Marketing Service

7 CFR Part 1150

[Document No. AMS-DA-20-0060]

National Dairy Promotion and Research Board Reapportionment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document invites comments on a proposed amendment to the Dairy Promotion and Research Order (Dairy Order). The proposal would modify the number of National Dairy Promotion and Research Board (Dairy Board) members in two of the 12 regions. The total number of domestic Dairy Board members would remain the same at 36. This modification was requested by the Dairy Board, which administers the Dairy Order, to better reflect the geographic distribution of milk production in the United States.

DATES: Comments must be submitted on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written comments on this proposed rule. Comments may be submitted through the Federal e-rulemaking portal at www.regulations.gov or emailed to Whitney.Rick@usda.gov and should reference the document number, date, and page number of this issue of the **Federal Register**. All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Whitney A. Rick, Director, Promotion, Research, and Planning Division, Dairy Program, AMS, USDA, 1400

Independence Ave., SW, Room 2958-S, Stop 0233, Washington, DC 20250-0233.

Phone: (202) 720-6909. Email: Whitney.Rick@usda.gov.

SUPPLEMENTARY INFORMATION: This proposed rule is issued pursuant to the Dairy Production Stabilization Act (Dairy Act) of 1983, Public Law 98-180 as codified in 7 U.S.C. 4501-4514, as amended.

Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action. This action falls within a category of regulatory actions that the OMB exempted from Executive Order 12866 review.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have a retroactive effect. If adopted, this rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Dairy Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 118 of the Dairy Act, any person subject to the Dairy Order may file with the Secretary a petition stating that the Dairy Order, any provision of the Dairy Order, or any obligation imposed in connection with the Dairy Order is not in accordance with the law and may request a modification of the Dairy Order or to be exempted from the Dairy Order (7 U.S.C. 4509). Such person is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Dairy Act provides that the district court of the United States in any district in which the person is an inhabitant or has his principal place of business has jurisdiction to review the Secretary's ruling on the petition, provided a complaint is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. The purpose of the Regulatory Flexibility Act is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

The Dairy Act authorizes a national program for dairy product promotion, research and nutrition education. Congress found that it is in the public interest to authorize the establishment of an orderly procedure for financing (through assessments on all milk produced in the United States for commercial use and on imported dairy products) and carrying out a coordinated program of promotion designed to strengthen the dairy industry's position in the marketplace and to maintain and expand domestic and foreign markets for fluid milk and dairy products.

The Small Business Administration (13 CFR 121.201) defines small dairy producers as those having annual receipts of not more than \$1,000,000 annually. Most of producers subject to the provisions of the Dairy Order are considered small entities.

This proposed rule would amend the number of members in two of the Dairy Board's 12 geographic regions to better reflect the geographic distribution of milk production in the United States.

The Dairy Order is administered by a 37-member Dairy Board, with 36 members representing 12 geographic regions within the United States and one member representing importers. Section 1150.131(e) of the Dairy Order requires the Dairy Board to review the geographic distribution of milk production volume throughout the United States at least every five years and not more than every three years and, if warranted, recommend to the Secretary a reapportionment of regions in order to better reflect the geographic distribution of milk production volume in the United States.

Based on a review of the 2019 geographic distribution of milk production, the Dairy Board has concluded that the number of Dairy Board members for two regions should be changed. The Dairy Board conducted the previous reapportionment in 2016 based on 2014 milk production.

The proposed amendment is not expected to have significant economic impact on persons subject to the Dairy Order. The proposed changes merely would allow representation of the Dairy Board to better reflect geographic milk production in the United States.

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulation (5 CFR part 1320), which implements the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), information collection requirements and record keeping provisions imposed by the Dairy Order have been previously approved by OMB and assigned OMB Control No. 0581-0093.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large entities. As with all Federal research and promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Executive Order 13175

This proposed rule has been reviewed under E.O. 13175 – Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider

whether their rulemaking actions would have tribal implications. AMS has determined that this proposed rule is unlikely to have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Background

The Dairy Order is administered by a 37-member Dairy Board, with 36 members representing 12 geographic regions within the United States and one member representing importers. The Dairy Order provides in section 1150.131 that the Dairy Board shall review the geographic distribution of milk production volume throughout the United States and, if warranted, shall recommend to the Secretary a reapportionment of regions and/or modification of the number of producer members from regions in order to best reflect the geographic distribution of milk production in the United States. The Dairy Board is required to conduct the review at least every five years and not more than every three years. The Dairy Board conducted the previous reapportionment review in 2016 based on 2014 milk production.

The Dairy Order does not specify the procedure for calculating the factor of pounds of milk per member. For the purposes of the current reapportionment analysis, the procedure will remain the same as the 2016 reapportionment, by using USDA's National Agricultural Statistics Service (NASS) milk production data and dividing by 36 to determine a factor of pounds of milk represented by each domestic Dairy Board member. The resulting factor was then divided into pounds of milk produced in each region to determine the number of Dairy Board members for each region. Accordingly, the same process using 2019 milk production data was employed for the current reapportionment calculation.

Table 1 summarizes, by region, the volume of U.S. milk production distribution for 2019, the percentage of total U.S. milk production, and the current number of domestic Dairy Board seats per region.

Table 1 – Current regions and number of board seats.

Proposed Regions and States	Milk Production (mil. lbs.)	Percentage of total milk production	Current number of board seats
1. Alaska, Oregon, Washington.....	9,378.2	4.3	2
2. California, Hawaii.....	40,565.9	18.6	7
3. Arizona, Colorado, Montana, Nevada, Utah, Wyoming.....	13,005.6	6.0	2
4. Arkansas, Kansas, New Mexico, Oklahoma, Texas	26,654.0	12.2	4
5. Minnesota, North Dakota, South Dakota.....	13,067.0	6.0	2
6. Wisconsin.....	30,601.0	14.0	5
7. Illinois, Iowa, Missouri, Nebraska.....	9,548.0	4.4	2
8. Idaho.....	15,631.0	7.2	2
9. Indiana, Michigan, Ohio, West Virginia.....	20,973.0	9.6	3
10. Alabama, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, Virginia.....	8,528.0	3.9	2
11. Delaware, Maryland, New Jersey, Pennsylvania...	11,121.7	5.1	2
12. Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont.....	19,308.6	8.8	3
Total:	218,382.0	100	36

Source: USDA NASS Milk Production, Disposition, and Income 2019 Summary

In 2019, total U.S. milk production was 218,382 billion pounds, and each of the domestic Dairy Board members as currently apportioned would represent 6,066.2 million pounds of milk.

Based on 2019 milk production data, the Dairy Board proposes that member representation in Region 8 (Idaho) be increased from two members to three members.

Milk production in Region 8 increased to 15,631 million pounds, up from 13,873 million

pounds in 2014, indicating three Dairy Board members (15,631 divided by 6,066.2 = 2.58) compared to two members based on 2014 milk production data.

Based on 2019 milk production data, the Dairy Board proposes that member representation in Region 10 (Alabama, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, and Virginia) be decreased from two members to one member. Milk production in Region 10 decreased to 8,528 million pounds, down from 9,987 million pounds in 2014, indicating one Dairy Board member (8,528 divided by 6,066.2 = 1.40) compared to two members based on 2014 milk production data.

Table 2 summarizes by region the volume of U.S. milk production distribution for 2019, the percentage of total U.S. milk production, and the proposed number of domestic Dairy Board members.

Table 2 – U.S. milk production by region and proposed number of board seats

Proposed Regions and States	Milk Production (mil. lbs.)	Percentage of total milk production	Proposed number of board seats
1. Alaska, Oregon, Washington.....	9,378.2	4.3	2
2. California, Hawaii.....	40,565.9	18.6	7
3. Arizona, Colorado, Montana, Nevada, Utah, Wyoming.....	13,005.6	6.0	2
4. Arkansas, Kansas, New Mexico, Oklahoma, Texas	26,654.0	12.2	4
5. Minnesota, North Dakota, South Dakota.....	13,067.0	6.0	2
6. Wisconsin.....	30,601.0	14.0	5
7. Illinois, Iowa, Missouri, Nebraska.....	9,548.0	4.4	2
8. Idaho.....	15,631.0	7.2	3
9. Indiana, Michigan, Ohio, West Virginia.....	20,973.0	9.6	3
10. Alabama, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, Virginia.....	8,528.0	3.9	1
11. Delaware, Maryland, New Jersey, Pennsylvania.	11,121.7	5.1	2
12. Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont.....	19,308.6	8.8	3
Total:	218,382.0	100	36

Source: USDA NASS Milk Production, Disposition, and Income 2019 Summary

The Dairy Board unanimously approved the proposal to change the number of seats in two of the 12 geographic regions. AMS independently reviewed the Dairy Board's reapportionment proposal and concluded that data from USDA's NASS Milk

Production, Disposition, and Income 2019 Summary supports the proposed changes.

During AMS's independent analysis, AMS also determined that the Dairy Board fulfilled the Dairy Order's requirement to conduct an evaluation and recommended changes to the Secretary in order to best reflect the geographic distribution of milk production volume in the United States. Therefore, after AMS's evaluation of the Dairy reapportionment proposal, AMS agrees that the proposed membership change would better reflect the geographic distribution of milk production volume in the United States. A 30-day comment period is provided for interested persons to comment on this proposed rule.

List of Subjects in 7 CFR Part 1150

Dairy Products, Milk, Promotion, Research.

For the reasons set forth in the preamble, AMS proposes to amend 7 CFR part 1150 as follows:

PART 1150 - DAIRY PROMOTION PROGRAM

1. The authority citation for 7 CFR part 1150 continues to read as follows:

Authority: 7 U.S.C. 4501-4514 and 7 U.S.C. 7401

2. In § 1150.131, revise paragraphs (b)(8) and (10) to read as follows:

§ 1150.131 Establishment and membership.

* * * * *

(b) * * *

- (8) Three members from region number eight comprised of the following State:

Idaho.

* * * * *

- (10) One member from region number ten comprised of the following States:

Alabama, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Mississippi,

North Carolina, Commonwealth of Puerto Rico, South Carolina, Tennessee, and Virginia.

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Erin Morris,
Associate Administrator,
Agricultural Marketing Service.

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